IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1360 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
AND
HONOURABLE MR.JUSTICE H.B.ANTANI

1	Whether Reporters of Local Papers may be allowed to see the judgment?	NO
2	To be referred to the Reporter or not?	NO
3	Whether Their Lordships wish to see the fair copy of the judgment?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?	NO
5	Whether it is to be circulated to the Civil Judge?	NO

THAKORE VANAJI REVAJI JOITAJI - Appellant
Versus
STATE OF GUJARAT - Opponent

Appearance :
MR ASHUTOSH R BHATT for the Appellant.
MS FALGUNI PATEL, ADDITIONAL PUBLIC PROSECUTOR for the Opponent.

CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 30/10/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The present appeal preferred under Section 374 (2) of the Code of Criminal Procedure is directed against the judgment and order dated 30-09-2003 passed by the learned Special Judge (2nd Fast Track Court), Mehsana in Sessions Case No. 7 of 2003, imposing the sentence on the appellant for a period of 10 years rigorous imprisonment and fine of Rs. 10,000/-, in default, 1 year's rigorous imprisonment under Section 376 of the Indian Penal Code and 1 year's rigorous imprisonment and fine of Rs. 250/-, in default, 1 month's rigorous imprisonment under Section 506 (2) of the Indian Penal Code, 1860. The learned Judge has, however, acquitted the appellant for the offences punishable under Sections 3 (1) (x) and 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The short facts giving rise to the present appeal are as under:-

As per the prosecution case, on 03-10-2002, when the complainant was in her house situated at Devda, Vijapur Taluka, she was informed by the appellant that her husband had become unconscious and was lying near the alley situated near Dabodia. She, therefore, accompanied the appellant who took her near the lemon tree and by gaging her mouth and administering threats, committed rape on her without her consent and desire. Thus, the appellant has committed the offences punishable under Sections 376

and 506 (2) of the Indian Penal Code. Even though the appellant was fully aware that the victim belonged to the Scheduled Caste, he gave her inducement and with a view to cause insult to the husband of the victim, committed rape on her. He also abused the victim and thereby committed the offences punishable under Sections 3 (1) (x) and 3 (2) (v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. The complaint was given by Narmadaben to the learned Judicial Magistrate (First Class). On the strength of the complaint given by the victim, the place where the incident had taken place was visited by the Investigating Officer and the *panchnama* of the place of incident was prepared. *Panchnama* with regard to seizure of the clothes put on by the victim was prepared. The Investigating Officer, thereafter, seized the clothes put on by the appellant and recovered the weapon which was found from his possession and prepared the *panchnama*. The victim as well as the appellant were sent for medical examination. *Muddamal* articles seized was sent to Forensic Science Laboratory. The appellant came to be arrested in connection with the offences registered under Sections 376 and 506 (2) of Indian Penal Code as well as Sections 3 (1) (x) and 3 (2) (v) of the Prevention of Atrocities Act. On receipt of the Medical Certificate and the FSL Report, the appellant was produced before the learned Judicial Magistrate (First Class) at Vijapur, who in turn committed the case to the Sessions Court under

Section 209 of the Code of Criminal Procedure as the matter was exclusively triable by the Court of Sessions.

3. The prosecution has examined the following witnesses in order to prove the guilt of the appellant:

(i) PW-1 Complainant / victim *vide* Exh. 10.
(ii) PW-2 Medical Officer - Dr. Rajendra Dasrathbhai Patel *vide* Exh. 12.
(iii) PW-3 *Panch* of the place of incident - Babubhai Jethabhai Chamar *vide* Exh. 15.
(iv) PW-4 Husband of the victim – Parshottambhai Mangalbhai Parmar *vide* Exh. 17.
(v) PW-5 Daughter of the victim - Dakshaben Parshottambhai Parmar *vide* Exh. 18.
(vi) PW-6 *Panch* of the recovery of the clothes - Amrutbhai Bhodidas Patel *vide* Exh. 19.
(vii) PW-7 *Panch* with regard to recovery of the weapons - Pratapji Gopalji Thakore *vide* Exh. 21.
(viii) PW-8 *Panch* with regard to the place of incident - Pashabhai Ranchhodbhai Parmar *vide* Exh. 22.
(ix) PW-9 Medical Officer Dr. Jagdishkumar Khodabhai Solanki *vide* Exh. 24.
(x) PW-10 Investigating Officer - PSI Shri J. K. Vaghela *vide* Exh. 28.

4. The prosecution has placed reliance on the

following documentary evidence:

(i) Complaint given by the victim *vide* Exh. 11.
(ii) Medical Certificate issued to the appellant *vide* Exh. 13.
(iii) Medical Certificate issued to the victim *vide* Exh. 14.
(iv) *Panchnama* of the place of incident *vide* 16.
(v) *Panchnama* of the clothes put on by the appellant and the recovery of the weapon *vide* Exh. 20.
(vi) *Panchnama* of the clothes put on by the appellant *vide* Exh. 25.
(vii) Note which was sent to FSL *vide* Exh. 30.
(viii) Report given by FSL *vide* Exh. 31.
(ix) Letter written by FSL *vide* Exh. 32.
(x) Analysis of the *muddamal* article given by FSL *vide* Exh. 33.
(xi) Serological Report of the FSL *vide* Exh. 34.

5. At the conclusion of trial, further statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein he has stated that a false case has been foisted on him because of political rivalry with the opposition group of the Sarpanch.

6. The learned Judge, on appreciation of the evidence, held that the deposition adduced by the victim *vide* Exh. 10 makes it abundantly clear that, after giving false information to the victim, the

appellant took her in the field situated in the village and by gaging her mouth and putting her under threat, committed rape on her without consent and against her will. The deposition adduced by the victim gets further corroboration from the Medical Certificate issued to the appellant *vide* Exh. 13 and to the victim *vide* Exh. 14. In the Medical Certificate issued by the Medical Officer, history of rape has been elaborately narrated. The doctor has adduced the deposition *vide* Exh. 12 wherein he has reiterated the history which was given to him by the victim as well as the accused at the time of the examination. Thus, the learned Judge held that since the prosecution has conclusively established the involvement of the appellant in the commission of offence, he is liable to be convicted for the offences punishable under Section 376 and 506 (2) of the Indian Penal Code. However, the learned Judge acquitted the appellant for the offences punishable under Sections 3 (1) (x) and 3 (2) (v) Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

7. Learned Advocate Mr. Ashutosh Bhatt representing the appellant submitted that the deposition adduced by the victim *vide* Exh. 10 does not get necessary support or corroboration from other witnesses and, therefore, the involvement of the appellant in the commission of offence raises doubt. The learned Advocate submitted that the appellant has been falsely implicated in the commission of offence

because of rivalry which the appellant had with the other group of Sarpanch in the village. The learned Advocate, placing reliance on the documentary evidence, submitted that even medical evidence could not successfully establish the involvement of the appellant in the commission of offence and, therefore, the appellant is required to be given benefit of doubt. The learned Advocate submitted that, at the conclusion of trial, further statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure. The explanation given by the appellant was not taken into account by the learned Trial Judge while imposing the sentence under Section 376 and 506 (2) of the Indian Penal Code. Thus, the learned Advocate submitted that, on the basis of of evidence on record of the case, since the involvement of the appellant has not been established by the prosecution by adducing cogent and clinching evidence, he be set at liberty forthwith. The learned Advocate, in the alternative, submitted that if the Hon'ble Court comes to the conclusion that the appellant has committed the offence punishable under Sections 376 and 506 (2) of the Indian Penal Code, then the sentence which the appellant has already undergone be imposed on him taking into account the facts and circumstances of the case.

8. Learned Additional Public Prosecutor Ms. Falguni Patel representing the State submitted that the deposition adduced by the prosecutrix at Exh. 10

is supported by her complaint given to the Judicial Magistrate (First Class) *vide* Exh. 11. The Medical Certificate issued to the appellant *vide* Exh. 13 and to the victim *vide* Exh. 14 further corroborates the prosecution story about the involvement of the appellant in the commission of offence. The *panchnama* of the place of incident, the *panchnama* of the clothes seized from the possession of the appellant as well as the victim and the report of the FSL further corroborate the prosecution story about the involvement of the appellant in the commission of offence. Thus, the learned Additional Public Prosecutor submitted that since the prosecution has established entire link connecting the appellant with the commission of offence, the order of sentence passed by the learned Additional Sessions Judge requires to be upheld and the appeal be dismissed.

9. This Court has heard learned Advocate Mr. Ashutosh Bhatt for the appellant and learned Additional Public Prosecutor Ms Falguni Patel for the respondent-State, at length and in great detail. This Court has also undertaken a complete and comprehensive appreciation of all vital features of the case as well as the entire evidence on record of the case.

10. On re-appreciation and reevaluation of the evidence on record of the case, we find that the victim was falsely informed by the appellant on 03-10-2002 about the state of unconsciousness of her husband. After giving false information, the

appellant took the victim to the nearby field and by gaging her mouth and putting her under threat, committed rape on her. The victim has adduced deposition *vide* Exh. 10 wherein she has reiterated that she was given false information about her husband by the appellant and after giving false information, the appellant took her to nearby field and committed rape on her. The version given by the appellant in examination-in-chief has not been dislodged in the cross-examination. The husband of the victim PW-4 Parshottambhai Mangalbhai Parmar *vide* Exh. 17 has deposed in his testimony that his wife narrated the incident of the rape committed by the appellant on 03-10-2002 on his return from the office in the evening. Likewise, the daughter of the victim PW-5 Dakshaben Purshottam Parmar at Exh. 18 also has reiterated in her deposition about the incident which took place on 03-10-2002. She has deposed in her testimony that the incident was narrated by her mother to the father on the next day in the morning. The prosecution has examined *panch*-witnesses and also produced the *panchnama* of the place of incident, the *panchnama* of the seizure of the clothes put on by the victim as well as the appellant and the recovery of the weapon which was found from the possession of the appellant. We have also considered the FSL Report at Exh. 33 and the Serological Report at Exh. 34 to the prosecution case. The deposition adduced by the victim stands corroborated by the deposition of the other witnesses as well as by Dr. Rajendra Dasrathbhai Patel who had examined the victim and the appellant. Medical Certificate provides corroboration to the prosecution story about the

involvement of the appellant in the commission of offence.

11. Thus, in the facts and circumstances of the case, the deposition adduced by the victim, in our considered view, is enough to connect the appellant with the commission of offences punishable under Sections 376 and Section 506 (2) of the Indian Penal Code. Although there is no need for corroboration of the deposition adduced by the victim, there is ample corroboration to the deposition adduced by the victim which is in the form of the deposition adduced by her husband PW-4 at Exh. 17 and her daughter PW-5 at Exh. 18 as well as the panchnama of the place of incident, the panchnama of the seizure of the clothes and the recovery of weapon and the deposition adduced by the doctor as well as the certificate given by the doctor in the present case. In view of the afore stated facts and circumstances of the case, as the entire link connecting the appellant with the commission of offence has been duly proved and established by the prosecution, the judgment rendered by the learned Additional Sessions Judge, in our view, requires to be upheld.

12. For the foregoing reasons, we pass the following order:

ORDER

The appeal fails and is dismissed. *Muddamal* be disposed of in terms of the directions given by the learned Judge of the Trial Court in the impugned judgment.

[ANIL R. DAVE, J.] [H. B. ANTANI, J.]

/shamnath